

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1891 of 1999

with

CIVIL REVISION APPLICATION No 1892 of 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MYSORE CHIP BOARDS LTD.
VERSUS
M/S. TEXTILE MACHINERY SYNDICATE

Appearance: (In both the civil revision applications)
MR BT RAO for the Petitioner
MR MIHIR JOSHI for the Respondent

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 09/02/2000

C.A.V. JUDGMENT

1. As both the matters have arisen between the same parties, the same are taken up for hearing together and are being decided by this common judgment. Arguments have been advanced by the counsel for the parties with reference to civil revision application No. 1891 of 1999. The counsel for the petitioner states that in both these matters identical order has been passed by the trial court and identical grounds of challenge to that order have been raised.

2. Challenge has been made in this revision application by defendant - petitioner to the order of the Judge, City Civil Court No.21 dated 21-10-1999 under which leave to defend has been granted to it on condition of depositing Rs.50,000/=. The suit has been filed by the plaintiff respondent for recovery of Rs.4,59,637/=.

3. Learned counsel for the petitioner contended that the trial court has not considered all documentary evidence. It has next been contended that the document which is relied upon is wholly irrelevant. Lastly, it is contended that the petitioner has spent huge amount to get the defective machinery supplied by the plaintiff respondent corrected. He raised the bill for this against the plaintiff which amount has not been paid. Lastly, it is contended that the well settled principle which has been laid down by the Hon'ble Supreme Court in catena of decisions as well as of this court is to be taken care of and kept in mind while considering the application filed by the defendant for grant of leave to defend.

4. On the other hand, learned counsel for the plaintiff- respondent submitted that it is an admitted case of the defendant- petitioner that amount of Rs. 6 lacs are still payable by it to the plaintiff respondent. In support of his contention, the counsel for the plaintiff- respondent placed reliance on the document, the letter dated 14th June, 1997 of the defendant petitioner written to the plaintiffrespondent. It has next been contended that the learned trial court has taken too lenient view otherwise leave to defend should have been granted to the petitioner in these facts on deposit of full amount of claim in the suit. Lastly, it is contended that the case of the petitioner does not fall under any of the clauses (a), (b) and (c) of subsection (1) of section 115, C.P.C.. In case the order of the court below is allowed to stand, it will

not occasion any failure of justice or will not cause any irreparable injury.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. I find sufficient merits in the contention raised by the learned counsel for the plaintiff respondent that the learned trial court has taken too liberal and lenient view in the matter. If we go by the contention of the counsel for the defendant petitioner that it incurred the expenses of Rs.1 lac and Rs.3,25,000/= towards the correction of the defective machinery supplied to it by the plaintiff- respondent, that amount comes to Rs.4,25,000/=. This amount is not admitted by the plaintiff- respondent but still it has taken to be correct when the claim of the petitioner in the suit is of Rs.4,59,637/= and leave to defend which has been granted to the defendant - petitioner on deposit of Rs.50,000/= is certainly a lenient view which has been taken by the court below.

7. The letter of the defendant - petitioner dated 14th June, 1997 reads as under:

Enclosed please find demand draft no. 747984
dt. 13-6-97 for Rs.2,97,251/- payable at Bank
of India, Ahmedabad.

We are arranging to release balance six lacs as
under:

- On 30-6-97 - 3 lacs
- On 15-7-97 - 3 lacs

Kindly bear with us for some more time.

Kindly acknowledge the receipt.

8. The bills aforesaid of the payment towards the repairing charges and machinery supplied by the plaintiff- respondent to the defendant - petitioner are of date after 14th June, 1997. After 14th June, 1997, to deprive of this claim, it is possible that the defendant - petitioner would have raised this claim but the substance of the matter has to be considered and it is an admitted case of the defendant - petitioner that Rs. 6 lacs have to be paid by petitioner to the plaintiff- respondent. After 14th June, 1997, learned counsel for the plaintiff- respondent submits that no amount has been paid by the defendant petitioner to the

plaintiff- respondent and this fact has not been disputed. There is all possibility that to make out a case for dues in the eventuality where ultimately the plaintiff- respondent filed the suit for recovery of amount after 14th June, 1997 all these things have been created. It is a case where the learned trial court has not committed any error in passing of the impugned order much less a material irregularity in exercise of its jurisdiction which calls for the interference of this court. At the cost of repetition, it is to be stated that the court below has taken too lenient view in passing of the impugned order. Amount of Rs.6 lacs has to be paid by the plaintiffrespondent to the defendant petitioner by 15th June, 1997 and when this amount has not been paid, the plaintiff- respondent was perfectly legal and correct in its approach to file the suit and the court below has not committed any error in not granting unconditional leave to defend to the defendant - petitioner. If we go by principal claim made by the plaintiff - respondent in two suits it comes to Rs. 6,23,056/=. This also tallies with the letter of the defendant - petitioner in which it has agreed to pay to the plaintiff- respondent an amount of Rs. 6 lacs.

9. Taking into consideration, the totality of the facts of this case, I do not find any merits in both these revision applications. The order of the learned trial court if is allowed to stand in the facts of this case, will not cause any irreparable injury to the petitioner also. However, learned counsel for the plaintiff - respondent very fairly submitted that the plaintiff- respondent has no objection in case the amount of Rs.50,000/= to be deposited by the petitioner in the suit is kept deposited in the court. In view of this statement of the counsel for the plaintiff respondent, otherwise also, no irreparable injury will be caused to the petitioner in case the order of learned trial court is allowed to stand. But keeping of this amount in the court under the head, civil deposit, will not be of any benefit to either of the parties. Learned trial court is directed to invest this amount of Rs.50,000/= to be deposited by the petitioner in each case in the long term F.D.R.. Whosoever ultimately succeeds in the suit will get this amount together with interest accrued. The documents submitted by the petitioner in Court on 21-1-2000 are not relevant in this case. From these documents, it does not borne out that the letter dated 14-6-1997 of the defendant petitioner relates to these bills.

10. In the result, both these revision applications

are dismissed with costs. Rule is discharged in both the revision applications. Interim relief, if any, granted by this court stands vacated in both the revision applications.

zgs/-